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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 HECTOR DIAZ,

No. C 06-05686 CRB

12 Petitioner,

ORDER

13 v.

14 BEN CURRY, Warden

15 Respondent.
16 _____/

17 Petitioner, who is in the custody of the California Department of Corrections, has filed
18 a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner pled guilty to
19 a charge of murder in the Superior Court of San Mateo County. Accordingly, venue is
20 proper. See Local Rule 2254-3.

21 This Court may entertain a petition for a writ of habeas corpus “in behalf of a person
22 in custody pursuant to the judgment of a State court only on the ground that he is in custody
23 in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a);
24 Rose v. Hodges, 423 U.S. 19, 21 (1975).

25 A district court shall “award the writ or issue an order directing the respondent to
26 show cause why the writ should not be granted, unless it appears from the application that the
27 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal
28 is appropriate only where the allegations in the petition are vague or conclusory, palpably

1 incredible, or patently frivolous or false. Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir.
2 1990) (quoting Blackledge v. Allison, 431 U.S. 63, 75-76 (1977)).

3 The Court has reviewed the petition and finds good cause to proceed. Accordingly,

4 1. The Clerk of the Court shall serve by certified mail a copy of this Order
5 and the petition and all attachments thereto upon the respondents and the respondents'
6 counsel, the Attorney General of the State of California. The Clerk shall also serve a copy of
7 this Order on the petitioner's counsel.

8 2. Respondents shall file with this Court and serve upon the petitioner,
9 within sixty (60) days of the issuance of this Order, an answer conforming in all respects to
10 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas
11 corpus should not be issued. Respondent shall file with the answer a copy of all portions of
12 the state trial and appellate record that have been transcribed previously and that are relevant
13 to a determination of the issues presented by the petition.

14 3. If the petitioner wishes to respond to the answer, he shall do so by filing
15 a traverse with the court and serving it upon the respondents within thirty (30) days of his
16 receipt of the answer.

17 **IT IS SO ORDERED.**

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19 Dated: September 26, 2006



20 CHARLES R. BREYER
21 UNITED STATES DISTRICT JUDGE
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